

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

MAXWELL KADEL, et al.,

*Plaintiffs,*

v.

DALE FOLWELL, et al.,

*Defendants.*

No. 1:19-cv-00272-LCB-LPA

**SUPPLEMENTAL DECLARATION OF AMY RICHARDSON**

I, Amy Richardson, do hereby declare as follows:

1. I am more than 18 years of age, have personal knowledge of the facts set forth herein, and am otherwise competent to testify to the matters set forth herein.
2. I am a partner with Harris, Wiltshire & Grannis LLP, and counsel for Plaintiffs in this matter. I submit this declaration in support of Plaintiffs' Opposition to State Health Plan Defendants' Motion for Partial Summary Judgment.
3. Attached to this declaration are true and correct copies of the documents listed in the table below. Entries in the table indicate where documents have been excerpted, or have had highlighting applied to indicate the relevant portions of the document.

Exhibit	Description
A	Excerpt from 70/30 PPO Plan Benefits Booklet for 2017, with yellow highlighting applied to relevant portions
B	Excerpt from 80/20 PPO Plan Benefits Booklet for 2017, with yellow highlighting applied to relevant portions
C	Excerpt of Dep. Tr. of Dan H. Karasic, M.D.
D	Excerpt of Dep. Tr. of Dale Folwell

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: December 30, 2021

/s/ Amy Richardson  
Amy Richardson

## **CERTIFICATE OF SERVICE**

I certify that the foregoing document was filed electronically with the Clerk of Court using the CM/ECF system which will send notification of such filing to all registered users.

Dated: December 30, 2021

/s/ Amy E. Richardson  
Amy E. Richardson  
N.C. State Bar No. 28768  
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# Exhibit A



State Health Plan for Teachers and State Employees

## TRADITIONAL 70/30 PPO PLAN BENEFITS BOOKLET

January 1 – December 31, 2017





## What is not Covered?

B

- **Body piercing**
- Collection and storage of **blood** and stem cells taken from the umbilical cord and placenta for future use in fighting a disease
- **Bone** density wrist or heel radiology testing
- **Blood** pressure machines, cuffs or other blood pressure monitoring device

C

- **Childbirth** preparation classes, including but not limited to Lamaze classes, childbirth refresher classes, cesarean birth classes, vaginal birth after cesarean classes, and infant safety classes including CPR by a non-physician *provider*
  - Human breast milk processing, storage and distribution
- **Claims** not submitted to the *Plan* within 18 months of the date the charge was *incurred*, except in the absence of legal capacity of the *member*
- Side effects and **complications** of non-covered services, except for *emergency services* in the case of an *emergency*
- **Convenience** items such as, but not limited to, devices and equipment used for environmental control, urinary incontinence devices (including bed wetting devices) and equipment, heating pads, hot water bottles, ice packs and personal hygiene items
- **Cosmetic services**, which include the removal of excess skin from the abdomen, arms or thighs, skin tag excisions, cryotherapy or chemical exfoliation for active acne scarring, superficial dermabrasion, injection of dermal fillers, services for hair *transplants*, electrolysis and **surgery for psychological or emotional reasons**, except as specifically covered by the *Plan* including:
  - Services received either before or after the **coverage period** of the *Plan*, regardless of when the treated condition occurred, and regardless of whether the care is a continuation of care received prior to the termination
  - **Custodial care** designed essentially to assist an individual with activities of daily living, with or without routine nursing care and the supervisory care of a *doctor*. While some skilled nursing services may be provided, the patient does not require continuing skill services 24 hours daily. The individual is not under specific medical, surgical, or psychiatric treatment to reduce a physical or mental disability to the extent necessary to enable the patient to live outside either the institution or the home setting with substantial assistance and supervision, nor is there reasonable likelihood that the disability will be reduced to that level even with treatment. *Custodial care* includes, but is not limited to, help in walking, bathing, dressing, feeding, preparation of special diets and supervision over medications that could otherwise be self-administered. Such services and supplies are custodial as determined by the *Plan* without regard to the place of service or the *provider* prescribing or providing the services.
- **Camisoles**, or other clothing, post-mastectomy
- **Communication** boards or alternative communication devices

D

- **Dental care**, dentures, dental implants, oral orthotic devices, palatal expanders and orthodontics except as specifically covered by the *Plan*.
- **Dental services** provided in a *hospital*, except as specifically covered by the *Plan*.
- Evaluation and treatment of **developmental dysfunction** and/or learning disability.
- The following medications:
  - Injections by a health care professional of injectable *prescription medications*



## What is not Covered?

which can be self-administered, unless medical supervision is required

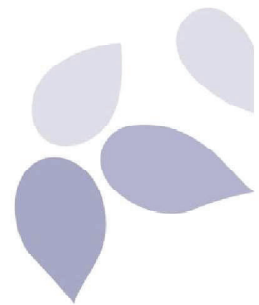
- Medications associated with conception by artificial means.
- For prescribed *sexual dysfunction* medications
- Take home medications furnished by a *hospital* or *nonhospital facility*
- **Experimental medication or any medication or device not approved by the Food and Drug Administration (FDA) for the applicable diagnosis or treatment.** However, this exclusion does not apply to *prescription medications* used in covered phases I, II, III and IV clinical trials, or medications approved by the FDA for treatment of cancer, if prescribed for the treatment of any type of cancer for which the medication has been approved as effective and accepted in any one of the following nationally recognized medication reference guides:
  - The American Medical Association Drug Evaluations
  - The American *Hospital Formulary* Service Drug Information
  - The United States Pharmacopoeia Drug Information
  - The National Comprehensive Cancer Network Drugs & Biologics Compendium
  - The Thomson Micromedex DrugDex
  - The Elsevier Gold Standard's Clinical Pharmacology
  - Any other authoritative compendia as recognized periodically by the United States Secretary of Health and Human Services.

## E

- Services primarily for **educational treatment** an/or purposes including, but not limited to, evaluation, books, tapes, pamphlets, seminars, classroom, Web or computer programs, individual or group instruction, counseling, and vocational counseling, educational supplies such as books, tapes, and pamphlets for the patient's education at cost to physician or other qualified health care professional, educational services rendered to patients in a group setting by physician or other qualified health care professional, except as specifically covered by the *Plan*
- For **educational** or achievement testing for the sole purpose of resolving educational performance questions
- The following **equipment**:
  - Air conditioners, furnaces, humidifiers, vacuum cleaners, electronic air filters and similar equipment
  - Devices and equipment used for environmental accommodation requiring vehicle and/or building modifications such as, but not limited to, positioning seats, chair lifts, stair lifts, home elevators, and ramps
  - Physical fitness equipment, hot tubs, Jacuzzis, heated spas, whirlpools, pools or membership to health clubs
  - Personal computers
  - Pacemaker monitors and external defibrillators with integrated electrocardiogram analysis
  - Postural drainage boards and similar equipment
  - Standing frames.

# Exhibit B





State Health Plan for Teachers and State Employees

## ENHANCED 80/20 PPO PLAN BENEFITS BOOKLET

January 1 – December 31, 2017







## WHAT IS NOT COVERED?

Exclusions that are specific to a type of service are stated along with the benefit description in "Covered Services." Exclusions that apply to many services are listed in this section. To understand all of the exclusions that apply, read "Covered Services," "Summary of Benefits" and "What Is Not Covered?" In addition, your health benefit plan does not cover services, supplies, drugs or charges that are:

- Not *medically necessary*
- Anything specifically listed in this benefits booklet as not covered or excluded, regardless of *medical necessity*.
- *Investigational* in nature or obsolete, including any service, medications, procedure or treatment directly related to an *investigational* treatment, except as specifically covered by the plan.
- Any *experimental* medication or any medication or device not approved by the Food and Drug Administration (FDA) for the applicable diagnosis or treatment. However, this exclusion does not apply to *prescription drugs* used in covered phases I, II, III and IV clinical trials, or drugs approved by the FDA for treatment of cancer, if prescribed for the treatment of any type of cancer for which the drug has been approved as effective and accepted in any one of the following:
  - The National Comprehensive Cancer Network Drugs & Biologics Compendium
  - The Thomson Micromedex DrugDex
  - The Elsevier Gold Standard's Clinical Pharmacology
  - Any other authoritative compendia as recognized periodically by the United States Secretary of Health and Human Services
- Side effects and complications of non-covered services, except as specifically covered by your health benefit plan or except for *emergency services* in the case of an *emergency*
- Not prescribed or performed by or upon the direction of a doctor or *other provider*
- For any condition, disease, illness or injury that occurs in the course of employment, if the *employee*, employer or carrier is liable or responsible for the specific medical charge (1) according to a final adjudication of the claim under a state's workers' compensation laws, or (2) by an order of a State Industrial Commission or other applicable regulatory agency approving a settlement agreement
- For basic life or work-related or medical disability examinations
- For a health care professional to administer injectable *prescription drugs* which can be self-administered, unless medical supervision is required
- For *inpatient* admissions primarily for the purpose of receiving diagnostic services or a physical examination. *Inpatient* admissions primarily for the purpose of receiving therapy services are excluded except when the admission is a continuation of treatment following care at an *inpatient* facility for an illness or accident requiring therapy
- For care in a self-care unit, apartment or similar facility operated by or connected with a *hospital*
- For *custodial care*, domiciliary care or rest cures, care provided and billed for by a hotel, health resort, convalescent home, rest home, nursing home or other extended care facility, home for the aged, infirmary, school infirmary, institution providing education in special environments, in residential treatment facilities, except for *chemical dependency* treatment, or any similar facility or institution
- For respite care of any kind except as specifically covered by your health benefit plan
- For services provided at request of patient in a location other than physician's office which are normally provided in the physician's office
- For day care services, chore services, attendant care services, homemaker services, companion care services, foster care services
- Received prior to the *member's effective date*
- Received after the coverage termination date, regardless of when the treated condition occurred, and regardless of whether the care is a continuation of care received prior to the termination
- For telephone consultations or web-based, online or other electronic evaluations, charges for failure to keep a scheduled visit, charges for completion of a claim form, charges for obtaining medical records, and late payment charges
- *Incurred* more than 18 months prior to the *member's* submission of a claim



## What is not Covered?



- For *cosmetic* purposes for any reason, including but not limited to excess skin from the abdomen, arms or thighs, and *surgery* for psychological or emotional reasons except as specifically covered by this health benefit plan.
- For camisoles, or other clothing, post-mastectomy
- For any services that would not be necessary if a non-covered service had not been received, except for *emergency services* in the case of an *emergency*
- For benefits that are provided by any governmental unit except as required by law
- For services that are ordered by a court that are otherwise excluded from benefits under this health benefit plan
- For care that the *provider* cannot legally provide or legally charge or is outside the scope of license or *certification*
- Provided and billed by a licensed health care professional who is in training
- Available to a *member* without charge and/or for care given to a *member* by a *provider* who is in a *member's* immediate family
- For any condition suffered as a result of any act of war or while on active or reserve military duty
- In excess of the *allowed amount* for services usually provided by one doctor, when those services are provided by multiple doctors
- For palliative, *cosmetic* or *routine foot care*
- For dental care, dentures, dental implants, oral orthotic devices, palatal expanders and orthodontics except as specifically covered by the Plan
- Considered to be dental services provided in a *hospital*, except when a hazardous condition exists at the same time or covered oral *surgery* services are required at the same time as a result of a bodily injury
- For any treatment or regimen, medical or surgical, for the purpose of reducing or controlling the weight of a *member* or for treatment of obesity, except for nutritional visits or surgical treatment of morbid obesity, or as specifically covered by your health benefit plan
- Bariatric *surgery*, except when provided at a Blue Distinction Center (BDC).
- Wigs, hair pieces and services for hair implants and electrolysis for any reason
- Received from a dental or medical department maintained by or on behalf of an employer, a mutual benefit association, labor union, trust or similar person or group
- For prescribed *sexual dysfunction* medications
- Music therapy, remedial reading, recreational or activity therapy, alternative therapy services, all forms of special education and supplies or equipment used similarly
- Hypnosis except when used for control of acute or chronic pain
- Acupuncture and acupressure
- Travel, whether or not recommended or prescribed by a doctor or other licensed health care professional, except as specifically covered by your health benefit plan
- For heating pads, hot water bottles, ice packs and personal hygiene and convenience items such as, but not limited to, devices and equipment used for environmental control, incontinence products (including briefs, diapers, underwear, underpads), and urinary incontinence devices (including bed wetting devices) and equipment
- For devices and equipment used for environmental accommodation requiring vehicle and/or building modifications such as, but not limited to, positioning seats, chair lifts, stair lifts, home elevators, and ramps
- Communication boards or alternative communication devices
- For safety equipment, devices or accessories, including but not limited to helmets with face guards and soft interfaces and any type of restraints
- For air conditioners, furnaces, humidifiers, dehumidifiers, vacuum cleaners, electronic air filters and similar equipment
- Physical fitness equipment, hot tubs, Jacuzzis, heated spas, whirlpools, pool or memberships to health clubs
- Athletic training evaluations or re-evaluations
- The following vision services:

# Exhibit C



IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
Civil Action No. 1:19-cv-00272

MAXWELL KADEL, et al., )

)

Plaintiffs, )

)

vs. )

)

DALE FOLWELL, in his official )

)

capacity as State Treasurer of )  
North Carolina, et al., )

)

Defendants, )

)

DEPOSITION OF DAN H. KARASIC, M.D.

Remote

September 20, 2021

9:00 a.m. Pacific Time

Prepared by:

Vicki L. O'Ceallaigh Champion, CR

Certificate No. 50534

Prepared for:

(Certified copy)

## I N D E X

## WITNESS:

DAN H. KARASIC, M.D.	PAGE
Examination by Mr. Knepper .....	5
Examination by Mr. Haskel.....	Xx

## E X H I B I T S

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2	Dr. Karasic's Expert Report.....	29
3	Bibliography.....	30
4	Article: International Clinical Practice Guidelines For Gender Minority/Trans People: Systematic Review And Quality Assessment	44
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6	Branstrom and Pachankis Study.....	56
7	Letters To The Editor, American Journal of Psychiatry	69
8	A Follow-Up Study of Boys With ..... Gender Identity Disorder	78
9	Short-Term Outcomes Of Pubertal Suppression In A Selected Cohort Of 12 To 15 Year Old Young People With Persistent Gender Dysphoria In The UK	80
10	Puberty Blockers and Suicidality in ..... Adolescents Suffering from Gender Dysphoria	91

1 DEPOSITION OF DAN H. KARASIC, M.D.  
2 commenced at 9:00 a.m. on September 20, 2021, via  
3 Zoom, before VICKI L. O'CEALLAIGH CHAMPION, a  
4 Certified Reporter, CR No. 50534, for the State of  
5 Arizona.

6  
7 \* \* \*

8 A P P E A R A N C E S  
9

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23

24 Also Present:

25 Mr. Braden Bates, Legal Videographer

1 when we are referring to people with gender  
2 dysphoria, little-G-little-D, we are also maybe  
3 referring people -- to people who might meet a  
4 criteria -- might meet the criteria for the DSM  
5 diagnosis, but the DSM diagnosis is, you know -- has  
6 a specific set of criteria.

7 And the gender dysphoria, small letters,  
8 existed before those seven criteria were laid out,  
9 because that -- those criteria did not, you know,  
10 exist until 2013.

11 BY MR. KNEPPER:

12 Q. Do all transgender people suffer from the  
13 diagnosis of gender dysphoria?

14 MR. HASKEL: Objection to form, foundation.

15 A. So in the DSM, they put in a post-transition  
16 specifier, and specifically -- so the people --  
17 people can get ongoing care post-transition, so --  
18 so I think that that was put in specifically so that  
19 if people are being, you know, treated under that  
20 diagnosis and their -- their symptoms have  
21 alleviated because of treatment, they can continue  
22 getting treatment under that diagnosis.

23 BY MR. KNEPPER:

24 Q. Are there individuals -- does that mean that  
25 all individuals -- are there any other individuals



# Exhibit D



Deposition of:  
**Dale Folwell**

*August 12, 2021*

In the Matter of:  
**Kadel, et al vs. Folwell**

Veritext Legal Solutions  
800-734-5292 | [calendar-dmv@veritext.com](mailto:calendar-dmv@veritext.com) |

MAXWELL KADEL, et al., )  
 )  
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 Plaintiffs, )  
 )  
 ) No. 1:19-cv-272-LCB-LPA  
 )  
 V. )  
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 )  
 DALE FOLWELL, et al., )  
 )  
 )  
 Defendants. )  
 )

AUGUST 12, 2021

NORTH CAROLINA STATE HEALTH PLAN  
3200 Atlantic Avenue, First Floor  
Raleigh, North Carolina

Reported by: Michelle Maar, RDR, RMR, FCRR

1 APPEARANCES:

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On behalf of Defendant State of North Carolina  
Department of Public Safety:

NORTH CAROLINA DEPARTMENT OF JUSTICE  
By: Alan McInnes (via teleconference)  
114 W. Edenton Street  
Raleigh, NC 27603  
Amcinnes@ncdoj.gov

1 Ms. Fitzgerald.

2 A. What generated me saying that?

3 Q. Yes.

4 A. I got a call.

5 Q. Okay. And it says that you, your statement was  
6 that the State Health Plan's 32 billion dollar debt --  
7 again, are you referencing the unfunded liability there?

8 A. Yes. And the reason I use terms like that is  
9 it's important, if you're trying to fix a problem, that you  
10 describe it in terms that people are more accustomed to.

11 Unfunded liability and OPEB are not something  
12 people are accustomed to.

13 Q. Do you know what the unfunded liability is today?

14 A. I do.

15 Q. And what is it?

16 A. 27.8 billion.

17 Q. And the last sentence there, it says the  
18 provisions to pay for sex change operations does none of  
19 these three things.

20 What did you mean by sex change operations?

21 A. The topic for which we've been discussing, that  
22 you refer to as gender dysphoria.

23 Q. Okay. So if -- so what is your understanding of  
24 a sex change operation I guess I'm trying to get at?

25 MR. WILLIAMS: Objection to the form.

1                   You can answer.

2                   THE WITNESS: My definition of -- I don't have a  
3 medical definition of a sex change operation.

4                   It's the things that are commonly known, commonly  
5 think of, which I've already described as things associated  
6 with folks who want to transition, transition their gender.

7 BY MR. WEAVER:

8                   Q. Is it your understanding that there's other  
9 healthcare benefits provided by the Plan that don't achieve  
10 those three goals, reducing the debt, providing a more  
11 affordable family premium, and provide transparency to  
12 taxpayers?

13                  A. I'm sure there are, but I cannot articulate them.

14                  Q. Okay. Now, my understanding, you were sworn in  
15 officially in your duties on January 1, 2017.

16                  A. Correct.

17                  Q. Okay. I'll show you Exhibit 6.

18                         (Exhibit 6 is marked for identification.)

19 BY MR. WEAVER:

20                  Q. It's another e-mail chain. This is PLAN  
21 DEF0021691.

22                  A. Do I go to the back again?

23                  Q. Yes, please, sir.

24                  A. Last time it was in the front.

25                         Okay.